IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4431 of 1999

to

FIRST APPEAL No 4446 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SPL.LAQ OFFICER

Versus

NATVARBHAI DHORIBHAI PATEL

Appearance:

MR DIGANT P.JOSHI, AGP for Petitioners

MR PRASHANT MANKAD for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and

MR.JUSTICE D.P.BUCH

Date of decision: 20/04/2000

C.A.V. COMMON JUDGEMENT {Per: D.P. Buch, J.}

1. All these appeals have been filed on behalf of the State and acquiring body against common judgment and award passed in Land References Cases No.298/96 to 313/96 recorded on 31st July, 1998, by the learned 2nd Extra Assistant Judge, Vadodara.

2. The facts may be briefly stated as follows:

The lands of the respondents were acquired for a public purpose i.e. construction of Canals under Narmada Canal Project. A Notification for the acquisition of the lands of the respondents was published on 14.5.1992 under Section 4(1) of the Land Acquisition Act (hereinafter referred to as `the Act'). Thereafter notification under Section 6 of the Act was published on 3.12.1992. Thereafter the Land Acquisition Officer proceeded to decide the compensation payable to the respondents and the matter was registered as Land Reference Case No.306/96. The Land Acquisition Officer went into the inquiry. The respondents claimed that they should be awarded compensation in respect to the lands acquired at Rs.30/- per sq.mt. However, after going through the materials on record, the Land Acquisition Officer did not agree with the aforesaid contention of the respondents and consequently the Land Acquisition Officer passed an award under Section 11 of the Act on 3.6.1994 and offered compensation to the respondents-claimants at Rs.3.60/per sq.mt. for non-irrigated lands and at Rs.7.20/- per sq.mt. for irrigated lands.

3. Feeling aggrieved by the said award of the Land Acquisition Officer, the respondents preferred application and requested that the matter be referred to the Court under Section 18 of the Act for deciding proper compensation payable to the claimants. The aforesaid applications were registered as Land References Cases Nos.298/96 to 313/96. It seems that all the matters arose for one and same award of the Land Acquisition Officer and, therefore, all the matters were consolidated and they were tried together.

4. After appreciating evidence on record, the learned 2nd Extra Assistant Judge, Vadodara, passed an award on 31st July, 1998, and directed that the respondents shall be entitled to get the actual market price of the lands in question at the rate of Rs.15.20/per sq.mt. of the irrigated lands with an

additional compensation under Section 23(1)(a) and solatium under Section 23(2) of the Act with an interest on the market price of acquired lands at the rate of 9% p.a. from the date of taking possession till one year and thereafter at the rate of 15% p.a. till its realisation from the date of award or from the date of taking possession whichever is earlier in time. The Reference Court also directed that the respondents shall not be entitled to interest on the award of additional amount payable under Section 23(1)(a) of the Act and on the solatium under Section 23(2) of the Act and they shall also not be entitled for solatium on the additional amount under Section 23(1)(a) of the Act. The Reference Court further directed that the amount of compensation offered and already paid by the Special Land Acquisition Officer to the respondents-claimants shall be deducted from the amount of compensation determined by the reference court as aforesaid.

5. It seems that the Special Land Acquisition Officer had awarded compensation at a low rate i.e. 3.60 per sq.mt. for non-irrigated lands and Rs.7.20/- per sq.mt. for irrigated lands. On the other hand, the Reference Court went other way to decide that the compensation be awarded at Rs.15.20/- per sq.mt for irrigated lands.

6. Feeling aggrieved by the said judgment and award of the reference court, the appellants preferred these appeals before this Court under Section 54 of the Act. It has been mainly contended here that the judgment and award passed by the reference court are contrary to law and evidence on record. That the learned Judge ought to have held that the award passed by the Land Acquisition Officer is adequate and he ought to have held that the respondents are not entitled to any additional compensation. That he ought to have held that the Land Acquisition Officer has passed an award after taking into consideration all the factors. That the respondents have not produced any evidence in support of their claims for enhancement of compensation. That the award has been passed after taking into consideration the principles of natural justice. That the reference court ought to have held that the Land Acquisition Officer has taken into consideration the registered sale deeds of last five years. That he ought to have been appreciated that the surrounding lands of the acquired lands are not developed and there was no facility of any kind. That he ought to have been appreciated that the acquired lands are of bagayat nature but there is no facility of irrigation.

Hence, the Land Acquisition Officer has properly classified the lands and compensation awarded to the respondents according to the market price prevailing at the relevant point of time. That the Reference Court ought to have held that the references were not filed within the period of limitation under Section 12 of the Act. That the judgment and award passed by the reference court are even otherwise illegal, errorneous on the aforesaid ground. The appellants have prayed that the present appeals may be allowed and the judgment and award passed by the reference court in the aforesaid references be set aside and it be held that the amount of compensation fixed and award passed by the Land Acquisition Officer are just, proper, reasonable and legal. The appellants also prayed cost of this litigations.

7. Considering the facts and circumstances of the case, the record and proceedings of the trial court were called for. We have heard the arguments advanced on behalf of the parties and have perused the papers including the record and proceedings of the matter. It may be stated at the outset that, the appellants were late in filing these appeals and therefore they had filed applications for condonation of delay. The delay caused in filing these appeals was condoned by this Court.

8. The learned AGP arguing the matter on behalf of the appellants have strenuously argued before us that, the trial court has failed to consider that the respondents mainly relied upon the income derived by them from the lands in question. That despite the said position, the reference court did not consider any evidence and arguments on that line. That, on the contrary, the reference court has decided the matter on the basis of the sale instances.

9. Now, if we go through the judgment and award of the reference court, it becomes clear that the reference court has considered the previous sale instances for assessing the market value of the lands in question. It appears from the judgment and award of the reference court that, the reference court was of the view that when the sale instances are available that would be the best evidence and the market value of the lands in question should assess on the strength of the sale instances. In the opinion of the reference court, the sale instances should have preference over the case of the parties with respect to the income from the lands.

10. On behalf of the respondents, it has been

strenuously argued that, even fixing of the price at Rs.15.20/- per sq.m.t. arrived at by the reference court is on lower side and the reference court committed error in fixing the same at Rs.15.20/- per sq.m.t. though the demand of the respondents was on much higher side. There is no dispute that the present respondents had approached the Land Acquisition Officer as well as the reference court with a claim that the price should be fixed at Rs.30/- per sq.mt. However the price has been fixed at Rs.15.20/- per sq.mt. and there is no appeal or cross objections filed by the respondents against the said decision of the reference court.

11. As stated above, the sale instances have not been produced and the purchaser and seller have not been examined and even the copies of the original sale instances have not been produced on the record of the reference court. In that view of the matter, the reference court could not have consider the sale instances only referred in the award of the Land Acquisition Officer for the purpose of fixing the price of the lands acquired in the present case. In that view of the matter, it can be said that there is a non-application of mind on the part of the reference court in considering the sale instances referred only by the Land Acquisition Officer. We do not disagree with this argument advanced by the learned AGP.

12. Now, as stated above, preference may be given to the previous sale instances. If either they are not produced or they are not proved then the court will have to go another mode of assessing the price of the lands acquired in a particular case. One of the recognised method is the income derived from the produce of the agriculture lands acquired in any particular case. For this purpose, Mukundbhai Ishvarram Bhatt who is an owner of land in Land Reference Case No.310/96 has tendered oral evidence before the reference court at Exh.10, wherein, he has deposed that his lands Block No.78 ad-measuring 437 sq.mt. has been acquired for the aforesaid purpose. Even the lands of the neighbouring owners have also been acquired accordingly and that all these lands are equally fertile and therefore all the cases have been collectively dealt with. He has also deposed before the reference court that the claimants claimed compensation at Rs.30/per sq.mt. With respect to the crop income, Mukundbhai Bhatt at Exh.10 has deposed that there is irrigation facility and wells are there. The said witness has further deposed that they used to take two crops every year and in monsoon they used to take cotton and pulses. That the crop would be about 9

to 10 quintal of cotton in one bigha of land. That pulses would be about 8 to 10 quintal per bigha. That at the relevant time the pulses could be sold at a price between Rs.1000/- to Rs.1200/- per quintal. That different crops were being taken in different season; even the fodder was also grown and the total income per year from the said agriculture land was Rs.15,000/- p.a. for one bigha. That the expenses are required to be deducted from the said income. He also deposed that there are facilities of telephone, dispensary, jain temple, veternary dispensary etc. and other amenities available in the village. He has further deposed that the crops were sold and bills have been produced at Exh.11,12 and 13. He has also produced the copies of village Form No.7/12 at Exh.14 to 30 of the acquired lands. He has also produced the index to show the lands sold by Namcharan Ratilal Panchal to Indravadan Chhitabhai Patel and stated that the lands of Block no.116 is away about 2 to 3 k.m. He further deposed that he had seen the lands and the said land is at par with the lands acquired in the present case. The said index has been produced at Exh.31. The witness has been cross-examined by the otherside.

13. Considering the aforesaid cross-examination, it transpires that, so far the crop income is concerned, there is no serious challenge to the evidence tendered by the witness. On the other hand, there is no counter evidence on the record to show that the aforesaid fact narrated by the said witness is not true. Therefore we have to consider the said facts of Mukundbhai Ishvarbhai Bhatt Exh.10 in proper perspective though there is no counter evidence by the otherside. It has to be taken into consideration that the said owner of the land would naturally have interest in giving figures on higher side to show higher income in order to earn higher income which cannot be disputed also.

14. It is true that some documents have been produced to support the said case of the claimants. It shows that Mukundbhai Ishvarbhai Bhatt has sold cotton at Rs.1641/per quintal in the year 1991-92. Similar is the case of Arvindbhai Hirabhai Patel who has sold cotton at Rs.1201/- per quintal. This shows that the cotton crop was being taken by the witness and other land owners at different point of time. Then also we get some support from the averments made in the award of the Land Acquisition Officer. If we consider the same which has been produced at Exh.5 on the record of the reference court, we can gather that even in the said award the Land Acquisition Officer has observed that the lands are of

medium quality; that mainly cotton, pulses, rice are the main crops taken in the said land; that there are facilities for irrigating the lands; that there are wells and tubewells; that there is facility of irrigation from the lake and the canal; that even as per the certificate of the Talati-cum-Mantry of the Gram Panchayat the lands are irrigated lands; that even the Deputy Executive Engineer of Narmada Canal Project who remained present on behalf of the acquiring body also stated before the Land Acquisition Officer that all these lands were irrigated lands.

15. Therefore the aforesaid say of the witness gets ample corroboration from the statements of facts made in the award of the Land Acquisition Officer. Even the statement of the Deputy Executive Engineer who remained present on behalf of the acquiring body before the Land Acquisition Officer has also supported the case of the land owners to a great extent. It is, therefore, clear that all the lands are irrigated lands and therefore it is clearly borne out that the lands are fertile.

16. Any way the figures as stated above may be exaggerated and even if take it that the figure of income shown at Rs.15,000/- per bigha per annum is on higher side, we can still consider that the lands owners used to earn around Rs.8,000/- to Rs.10,000/- per bigha per annum and even if we deduct 50% expenses for seeds, fertilisers, electricity, labour, insecticides etc. then also it can reasonably be inferred that the net income from the crops can be estimated between Rs.4,000/- to Rs.5,000/- per bigha per annum. There is a settled principle of law that for assessing the value of the lands, a multiplier of 10 can usefully be applied; meaning thereby that 10 years income is required to be considered. If that is done, the figure will come between Rs.40,000/- to Rs.50,000/per bigha for a period of 10 years. If that is considered for one sq.mt. then the amount would come to around Rs.18/-per sq.mt. In other words, the price of the land can safely be assessed around Rs.18/- per sq.mt. However the reference court has assessed the price at Rs.15.20/- per sq.mt., as against this, the price can be estimated around Rs.18/per sq.mt. This would clearly show that even the figure arrived by the reference court is on little lower side.

17. The learned AGP has very strenuously argued that the lands owners have not produced any other material to show the crop income. Now it is to be considered that the learned AGP is right in saying that the other materials have not been produced by the lands owners. At

the same time, fact remains that the appeals have been preferred by the Land Acquisition Officer and the acquiring body. The Land Acquisition Officer had 26 sale instances with him and all of them have been referred in the award extensively, yet none has been produced before the reference court. This shows that due vigilance was not shown by the acquiring body for disproving the case of the lands owners and for proving the case of the acquiring body.

18. As against this, the owners of the lands have produced material before the reference court in order to enable the said court to come to a finding about the price in question. Some bills have been produced, some quotations have been produced, village form No.7/12 and even index have been produced though the index cannot be taken as evidence for fixing the price of the lands acquired. It cannot be said that no material has been produced by the land owners in respect of their claim.

19. It has to be considered that the said evidence of the said witness has not been seriously challenged on behalf of the State or acquiring body on the point of crop income. No counter evidence have been produced by the present appellants. No witness has been examined by the appellants to disprove the case of the lands owners. So, on one hand, there was material before the reference court for assessing the price of the lands acquired and on the other hand there was total lack of evidence on the part of the acquiring body. The difficulty in accepting the previous sale instance can be found from the principle laid down in the case of Special Deputy Collector v. Kurra Sambasiva Rao, AIR 1997 SC 2625. It has been laid down that unless such sale transaction or sale index are proved by examining witnesses, i.e. vendor or vendee or scribe, no reliance can be placed on those documents for determination of market value of the acquired lands. Naturally, this principle laid down in the aforesaid case will apply to the earlier awards on which reliance is placed to determine the market value of the acquired lands. Unless evidence is led to show the similarity between the acquired lands in appeal and the acquired lands of earlier awards, the earlier awards cannot be blindly followed. Therefore, in the present case also we find that the appellants have not examined the seller or purchaser or the scribe of earlier instance and, therefore, those sale instances cannot be relied upon for the purpose of determining the price of the lands in dispute before us.

20. Comparing two position, it is apparently clear

that, the material on record of the reference court clearly indicates that the price fixed by the reference court at Rs.15.20/- per sq.m.t. is not proved to be on a higher side, and consequently, there is no merits in the present appeals, and hence all these appeals are without merits and deserve to be dismissed. The reference court has not fixed the price of the lands acquired on higher side. On the contrary, it appears to be on a little lower side.

21. At one point of time an effort was made to argue that the matter may be remanded for fresh consideration. It is true that the reference court has considered the evidence which is not the evidence in the eye of law, but for that aspect, if the said evidence and the observation are ignored then there is further material on the record of the reference court in the shape of crop income and this court can easily take into account the said material for assessing the price of the lands acquired. We have considered that aspect of the matter and have assessed the value of the lands on the said basis. In so doing, we are of the view that, the reference court has not assessed the price of the lands on higher side and consequently there is no scope of reduction. In other words, the appellants have no merits in the appeals and it is not shown by them that the price should be fixed at a lower side. It would not be productions, therefore, to remand the cases back to reference court.

22. Any way there is no merit in the present appeals. We therefore dismiss all these appeals and confirm the judgment and award of the Reference Court for the reasons assigned by us and not for the reasons recorded by the reference court. The appellants shall pay cost of the appeals to the respondents and shall bear their own cost in these appeals. Rule is discharged in all the appeals with costs as aforesaid.

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